

Assembly Bill 790 (Honda) Chapter 443***Establishment of public record of top 12 tax delinquents***

Effective January 1, 2000. Adds and repeals Article 1.5 (commencing with Section 7063) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code.

This Board-sponsored measure requires the Board until January 1, 2005 to make available as a matter of public record each quarter, a list of the 12 largest sales and use tax delinquencies in excess of one million dollars for which the person has received tax or tax reimbursement. A delinquency is described in the bill as an amount of tax that has been delinquent for more than 90 days for which a state tax lien has been filed, but does not include:

- **Any delinquency that is under litigation in a court of law**
- **Any delinquency under which the person has filed a petition for redetermination**
- **Any delinquency for which suitable payment arrangements have been made with the Board**
- **Any delinquency for which the taxpayer has filed bankruptcy**

Prior to making a tax delinquency a matter of public record, however, the bill requires the Board to provide a preliminary written notice by first-class mail, return receipt required, to the person or persons held liable for the tax. If within 30 days of receipt of that written notice, the person or persons do not either remit the amount due, or otherwise make arrangements with the Board for payment of the amount due, the tax delinquency is required to be included on the list.

The bill specifies that the quarterly list include:

- **The telephone number and address of the Board office to contact if a person believes placement of his or her name on the list is in error.**
- **The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.**

The bill requires the Board to remove any delinquencies from the list, as promptly as feasible, but no later than five business days, if any of the following occur:

- **The person liable for the tax has contacted the Board and resolution of the delinquency is or has been arranged**
- **The Board has verified that an active bankruptcy proceeding has been initiated**
- **The Board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount**
- **The Board has determined that the delinquency is uncollectible**

The bill further specifies that any person whose delinquency appears on the quarterly list, and who satisfies that delinquency in whole, or in part, may request the Board to include in its quarterly list any payments the person made to satisfy the delinquency. Upon receipt of that request, the bill specifies that the Board shall include those payments on the list as promptly as feasible.

Law Prior to Amendment:

Under existing law, Section 7056 of the Sales and Use Tax Law prohibits the Board to make known in any manner whatever, the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the Board or pay a sales and use tax. However, some exceptions exist in current law where confidential tax information is released to the public. For example, an exception exists under the settlement provisions of Section 7093.5 where the Board settles tax matters in dispute that are the subject of protests, appeals or refund claims. The law requires that a public record be made with respect to a settlement whenever a reduction in tax in excess of \$500 is approved. The public record must include, among other things, the name of the taxpayer, the total amount in dispute, and the amount agreed to pursuant to the settlement. Another exception includes cases where a taxpayer is delinquent in his or her tax obligations and the Board files a lien. The recording of the tax lien pursuant to Section 6757 establishes a public record of the existence of the lien against all property belonging to the taxpayer and located in this state.

Comments:

1. **Purpose.** To serve as an inducement for delinquent sales and use taxpayers to clear their accounts with the Board and to achieve greater tax compliance.
1. **Sales tax should be held at a higher standard.** Unlike income taxes, the sales tax is regarded as a "trust tax" because the obligors (customers) pay the tax to third parties (retailers) designated by statute to collect, hold, and remit the money to the State. These third parties hold the funds in trust for the State and thus can be

held personally liable when the funds are not remitted. In other words, since the customer has reimbursed the retailer for the tax, then the retailer collecting the tax should not be allowed to divert these funds dedicated to public schools, safety, and other purposes to his or her private use, thereby making the state and customers unwilling business partners. The Legislature enacted these personal liability provisions in recognition of the fact that when cash flow difficulties arise for retailers, they are often tempted to use the sales tax they collect to assist them in their financial affairs and to pay the State later when their cash flow is better. When those individuals fail to perform their roles as trustees, the public, as well as other honest retailers, should be made aware. AB 790 provides the mechanism to publicize the most flagrant of these irresponsible taxpayers.

2. Public disclosure of tax delinquencies is gaining interest. The Internal Revenue Service Restructuring and Reform Act of 1998 required the Joint Committee on Taxation to study whether greater levels of compliance might be achieved by publicly disclosing taxpayers who have not filed their required federal tax returns. On August 24, 1999, the United States General Accounting Office issued its report. According to the 28-page report, practices of publicly disclosing tax delinquencies have already begun in 4 states (Connecticut, Illinois, Montana and New Jersey) and the District of Columbia. The report indicates that officials from these entities believe their programs have improved or will improve compliance. The following is a summary of these entities' public disclosure results:

- Connecticut - Since January 1997, the State of Connecticut has posted the top 100 delinquent taxpayers in its Internet site. Through June 1999, Connecticut has collected approximately \$52 million from accounts eligible for listing, and another \$12 million has been negotiated through payment plans.
- Illinois – The Illinois Legislature authorized its public disclosure program in August 1998, which became effective January 1, 1999. The Illinois Department of Revenue can now publicly disclose all delinquent taxpayers who have final liabilities greater than \$10,000 for longer than a period of 6 months. Currently, public disclosure is made through the medium of press releases. However, in September 1999, the Department of Revenue plans to disclose these delinquencies on the Internet. Since March 1999, Illinois collected \$2.9 million, and entered into payment agreements of \$918,000.
- Montana – In April 1998, the Montana Department of Revenue began publicly disclosing on the Internet and through press releases, the names of Montana's top 50 delinquent taxpayer accounts. Since the program's inception, as of June 1999, 23 taxpayers paid in full, 18 negotiated payment plans, 23 filed outstanding returns, and 2 filed amended returns. Montana has collected \$367,839 as a result of these actions.

- New Jersey – In May 1999, the New Jersey Division of Taxation began publicly disclosing on the Internet the names of New Jersey’s top 100 delinquencies. As of July 27, 1999, New Jersey collected \$695,991 in response to this program.
- District of Columbia – In October 1997, the District of Columbia’s Office of Tax and Revenue began publicly disclosing on the Internet the names of delinquent taxpayers that owe more than \$10,000. Although that Office has not conducted an overall evaluation of its disclosure program, the Office has collected \$699,912 for fiscal year 1999 after sending warning letters, and \$70,587 after disclosure on the Internet.